

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

LARRY McGEE,

Defendant.

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ORDER

09-cv-495-bbc

05-cr-136-bbc

Defendant Larry McGee has filed a motion pursuant to 28 U.S.C. § 2255, in which he contends that his conviction and sentence are invalid on the ground that he was denied effective assistance of counsel. It is not necessary to determine whether defendant has any basis for his contentions because he has waited too long to file the motion. Defendant was sentenced on January 4, 2006. He appealed his sentence and conviction. On February 14, 2007, the court of appeals dismissed the appeal. He was then resentenced on the government's motion pursuant to Fed. R. Crim. P. 35(b) on May 2, 2007. He filed an appeal from this sentence, which was dismissed on December 17, 2007. Defendant did not petition for a writ of certiorari. Under § 2255, defendant had one year from the date on which "the judgment of conviction [became] final" in which to bring a post conviction

motion. The conviction would have become final 90 days after December 17, 2007, or March 17, 2008. Clay v. United States, 537 U.S. 529-30 (2003) (one-year statute of limitations does not begin to run until 90 days after time for filing petition for writ of certiorari has expired, even if defendant does not file such petition). Therefore, defendant had until March 17, 2009, in which to file a § 2255 motion unless he fits within one of the special circumstances in which the time for filing is extended. Defendant has not alleged any facts from which an inference may be drawn that any one of those special circumstances apply in his case, and I am aware of none. Therefore, I conclude that defendant had only until March 17, 2009 in which to file a § 2255 motion.

#### ORDER

IT IS ORDERED that defendant Larry McGee's motion for post conviction relief, filed pursuant to 28 U.S.C. § 2255, is DENIED as untimely.

Entered this 17th day of August, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge